IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

SNOHOMISH COUNTY,

Respondent,

v.

CORINNE R. HENSLEY,

Defendant,

FUTUREWISE, formerly known as 1000 FRIENDS OF WASHINGTON,

Appellant,

CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD, SULTAN SCHOOL DISTRICT, MARYSVILLE SCHOOL DISTRICT, and MARK VERBARENDSE,

Defendants.

MARK VERBARENDSE,

Plaintiff,

v.

CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD, SNOHOMISH COUNTY, CORINNE HENSLEY, 1000 FRIENDS OF WASHINGTON, YARMUTH DAVIS, MASTER BUILDERS ASSOCIATION, SNOHOMISH COUNTY-CAMANO ASSOCIATION OF REALTORS, MacANGUS RANCHES, SULTAN SCHOOL DISTRICT, WASHINGTON STATE DEPARTMENT OF COMMUNITY TRADE & ECONOMIC DEVELOPMENT, and MARYSVILLE SCHOOL DISTRICT,

Defendants.

MacANGUS RANCHES, INC.,

Respondent

No. 55693-2-I

DIVISION ONE

UNPUBLISHED

FILED: July 31, 2006

COX, J. – At issue is whether the decision of Snohomish County to re-designate and rezone property owned by MacAngus Ranches, Inc. ("MacAngus") was clearly erroneous under the Growth Management Act. Specifically, we must decide whether the MacAngus property is "agricultural land" under the GMA. The Central Puget Sound Growth Management Hearings Board held that it is such land when it invalidated the County's emergency ordinance dealing with that property. Because the subject property is agricultural land under the GMA, and the land has long-term commercial significance for agricultural production, we reverse the superior court and reinstate the decision of the Central Puget Sound Growth Management Hearings Board.

The 216 acres of real property at issue lie within the boundaries of the Tulalip Reservation, but is non-tribal land. MacAngus holds title to the property.

In 1982, the Snohomish County Agricultural Preservation Plan first designated the subject property as an Agricultural Area of Primary Importance. In 1993, the County adopted the Snohomish County Interim Agricultural Preservation Plan, in accordance with the GMA requirements, and designated the property as Upland Commercial Farmland (UCF).

In 1999, the County amended its GMA Comprehensive Plan and rezoned the Tulalip Subarea, which included the MacAngus property, from Rural Conservation (RC) to Agriculture-10 (A-10).

MacAngus requested an amendment to the Snohomish County Comprehensive Plan and Future Land Use Map (FLUM) to re-designate and rezone its property. In the proposal, MacAngus requested that the County re-designate its property from UCF to Rural Residential 10 Resource Transition (1 DU/10 Acres) and rezone its property from A-10 to Rural Resource Transition-10 (RRT).

The County considered the MacAngus proposal on the 2002 docket. The County Council agreed with MacAngus' proposal, adopting Ordinance 02-091. However, the County Executive vetoed the ordinance. In 2003, the County Council adopted Amended Emergency Ordinances No. 03-001 and 03-002, re-designating and rezoning the property, as MacAngus requested.

Futurewise (formerly "1000 Friends of Washington") petitioned the Central Puget Sound Growth Management Hearings Board for review of the County's decision. The Board determined that the County's re-designation of the MacAngus property was clearly erroneous under the GMA and invalidated the ordinances. The County and MacAngus sought review by the superior court. The court reversed the Board's decision and denied Futurewise's motion for reconsideration.

Futurewise appeals.

AGRICULTURAL LAND

The County and MacAngus argue that the MacAngus property does not satisfy the first prong of the test for agricultural land. The plain meaning of the

governing statute when applied to undisputed facts in this case supports the view that the land is agricultural.

Standard of Review

The Administrative Procedure Act governs judicial review of challenges to actions of the Growth Management Hearings Boards.[1] Under the APA, the "burden of demonstrating the invalidity of agency action is on the party asserting invalidity."[2] Deference to county planning actions that are consistent with the goals and requirements of the GMA supersedes deference generally granted by the APA and courts to administrative bodies.[3] Under the APA, a party aggrieved from a final Board decision may appeal the decision to the superior court.[4] On appeal, this court reviews the Board's decision, not the decision of the superior court, and "judicial review of the Board's decision is based on the record made before the Board."[5] "We apply the standards of RCW 34.05 directly to the record before the agency, sitting in the same position as the superior court."[6] An

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[1] Quadrant Corp. v. State Growth Mgmt. Hearings Bd., 154 Wn.2d 224, 233, 110 P.3d 1132 (2005).

[2] Id.; RCW 34.05.570(1)(a).

[3] Quadrant Corp., 154 Wn.2d at 238.

[4] King County v. Central Puget Sound Growth Mgmt. Hearings Bd., 142 Wn.2d 543, 552, 14 P.3d 133 (2000).

[5] Id. at 553 (quoting Buechel v. Dep't of Ecology, 125 Wn.2d 196, 202, 884 P.2d 910 (1994)).

[6] Id. (quoting City of Redmond v. Central Puget Sound Growth Mgmt. Hearings Bd., 136 Wn.2d 38, 45, 959 P.2d 1091 (1998)).

aggrieved party may challenge board action on the basis that it has erroneously interpreted or applied the law or its order is not supported by evidence that is substantial.[7] Substantial evidence is "a sufficient quantity of evidence to persuade a fair-minded person of the truth or correctness of the order."[8] Issues of law under RCW 34.05.570(3)(d) are reviewed de novo.[9]

Use or Capability of Use for Agricultural Production

Snohomish County and MacAngus, the aggrieved parties from the Board's decision, have the burden here as they did before the superior court. They contend that the subject property fails to meet the first prong of the test for "agricultural lands" under RCW 36.70A.030(2), which provides in relevant part as follows:

…

> ***land primarily devoted to*** the commercial production of horticultural, viticultural, floricultural, dairy, apiary, vegetable, or animal products ***or*** of berries, grain, hay, straw, turf, seed, Christmas trees not subject to the excise tax imposed by *RCW 84.33.100 through 84.33.140, finfish in upland hatcheries, or ***livestock***, and that has long-term commercial significance for agricultural production.[10]

The Board found that the MacAngus property was "capable of being used for agricultural production," applying the holding of City of Redmond v. Cent.

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[7] Id.

[8] Id. (quoting Callecod v. Washington State Patrol, 84 Wn. App. 663, 673, 929 P.2d 510 (1997)).

[9] City of Redmond, 136 Wn.2d at 46.

[10] (Emphasis added.)

Puget Sound Growth Mgmt. Hearings Bd. to this case.[11] This determination is well supported by the record.

It is uncontested that the subject property is used as pasture land. Under RCW 36.70A.030(2), land is primarily devoted to commercial production if it is used or capable of use for the production of, among other things, "livestock." Because the land has been used as pasture for cows, it meets the plain words of the statutory definition of RCW 36.70A.030(2).

We note further that the record illustrates that the history of the property shows that it has been in agricultural use since at least 1982. In fact, the County in its ordinance that is at issue in this case expressly acknowledged the subject property's current agricultural use in its findings:

…

> The County Council has considered all of the facts, testimonies and materials presented orally or in writing at the public hearing, and has reviewed the applicable law and the statements of all interested parties, including but not limited to . . . .
> This land cannot be profitably farmed. Its current ***agricultural use*** generates less revenue than the property tax generates.[12]

The history of the use of the subject property and the County's own express factual finding regarding the property's current agricultural use support the Board's determination that the property is both used and is capable of use for agricultural production. This satisfies the first prong of the requirements set forth

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[11] 136 Wn.2d at 53.

[12] Snohomish County Council, Amended Emergency Ordinance No. 03-001 (January 27, 2003), Finding F, Volume I, Tab 13, at 4-5 (emphasis added).

in RCW 36.70A.030(2).

The County argues that the proper test to determine whether land is primarily devoted to agricultural use is to look at the ***area*** surrounding the land, not just the parcel itself. According to the County, because the MacAngus property is located on a Federal Indian Reservation, tribal development exists adjacent to the property, and Interstate 5 and the City of Marysville are within close proximity, the ***area*** in question is not used or capable of being used for commercial agricultural production.

This argument is unconvincing. First, the argument fails to deal with the plain words of the statute defining the first prong of agricultural land that we have discussed earlier in this opinion. Those words expressly include land "primarily devoted to . . . livestock," which includes pasturing. Second, the County Council's findings, which we have quoted previously in this opinion, expressly characterize the subject property as one whose use is "current[ly] agricultural." The Council's correct focus on the land itself undercuts the argument the County now makes on appeal. Third, the determination that use of the subject property for agricultural purposes is sufficient for the first prong of the governing test is consistent with City of Redmond. There, the court held that "land is 'devoted to' agricultural use under RCW 36.70A.030 if it is in an area where the land is ***actually used*** or capable of being used for agricultural production."[13] We see no rationale basis to distinguish that case from this one.

[13] City of Redmond, 136 Wn.2d at 53 (emphasis added).

Fourth, even though the MacAngus property is within close proximity to tribal development and the City of Marysville, the record clearly indicates that the areas to the north and west of the subject property are characterized by "farm and pasture lands." That development also occurs in the area of the subject property is not dispositive. To interpret the GMA to ignore the uncontested fact that the subject property is used as pasture would require us to adopt a strained interpretation of the statute, one contrary to what appears to be clear legislative policy to "maintain, enhance, and conserve" agricultural lands.[14]

Next, the County argues that the "used or capable of being used" language of the first prong of the test is derived from examining the productivity of the soils of the subject. The simple answer to this argument is that the plain words of the first prong of the agricultural land definition expressly states that land primarily devoted to "livestock" use also satisfies that prong. Assuming without deciding that examination of the productivity of the soils is a proper method to determine whether the property meets the requirements of the first prong of the test, it is not the exclusive method.

The County incorporates by reference MacAngus' brief to support its argument regarding productivity of the soils. MacAngus contends, in part, that the property has never been commercially farmed during MacAngus' ownership. The record contains no evidence of commercial farming on the property. But that is irrelevant for purposes of the test under the first prong of the governing

[14] City of Redmond, 136 Wn.2d at 53.

statute. As we have explained, the subject property qualifies under that prong as agricultural land because it is used for pasturing of livestock.

The County's determination that the subject property "is not primarily devoted to agricultural purposes" is clearly erroneous.

Long-Term Commercial Significance for Agricultural Production

The County and MacAngus argue that the subject property does not have long-term commercial significance for agricultural production. The Board decided otherwise. This is the closer and more difficult question that we must decide.

We return to RCW 36.70A.030(2), the definition for agricultural land, that provides in relevant part as follows:

…

> land primarily devoted to the commercial production of horticultural, viticultural, floricultural, dairy, apiary, vegetable, or animal products or of berries, grain, hay, straw, turf, seed, Christmas trees not subject to the excise tax imposed by RCW 84.33.100 through 84.33.140, finfish in upland hatcheries, or livestock, ***and that has long-term commercial significance for agricultural production***.[15]

RCW 36.70A.030(10) defines "long-term commercial significance" as:

> [T]he ***growing capacity, productivity, and soil composition of the land*** for long-term commercial production, in consideration with the land's proximity to population areas, and the possibility of more intense uses of the land.[16]

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[15] (Emphasis added.)

[16] (Emphasis added.)

In order to determine whether agricultural land has "long-term commercial significance" for agricultural production, local governments must consider the statutory factors of RCW 36.70A.030(10), as well as other factors enumerated in WAC 365-190-050.[17] These latter factors were developed by the State Department of Community Trade and Economic Development and are often referred to as the CTED guidelines. These guidelines state:

> (1) In classifying agricultural lands of long-term significance for the production of food or other agricultural products, counties and cities shall use the land-capability classification system of the United States Department of Agriculture Soil Conservation Service as defined in Agriculture Handbook No. 210. These eight classes are incorporated by the United States Department of Agriculture into map units described in published soil surveys. ***These categories incorporate consideration of the growing capacity, productivity and soil composition of the land.*** Counties and cities shall **also consider** the combined effects of ***proximity to population areas and the possibility of more intense uses of the land as indicated by****:*
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> (a) The availability of public facilities;
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> (b) Tax status;
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> (c) The availability of public services;
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> (d) Relationship or proximity to urban growth areas;
>
> (e) Predominant parcel size;
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> (f) Land use settlement patterns and their compatibility with agricultural practices;
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> (g) Intensity of nearby land uses;
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> (h) History of land development permits issued nearby;
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> (i) Land values under alternative uses; and

[17] City of Redmond, 136 Wn.2d at 54-55.

(j) Proximity of markets.[18]

Reading together the statute defining "long-term commercial significance for agricultural production" and the CTED guidelines, we have several observations. First, the plain words of the guidelines mandate that counties shall, at minimum, use the land-capability classification system of the United States Department of Agriculture Soil Conservation Service to classify lands of long-term commercial significance for agricultural production. The reason is that the system incorporates "consideration of the growing capacity, productivity and soil composition of the land," the first three factors of the statutory definition that the guidelines supplement. In short, both the statute and the regulation that supplements it focus first on the land itself. Second, the guidelines go on to list factors other than the land itself. This latter group of factors appears to be secondary to those dealing first with the land. We base this view on the language both in the statute and the regulation: "in consideration with" in the statute; "also consider" in the regulation. Third, the latter group of factors is to be applied to determine "the combined effects of proximity to population areas and the possibility of more intense uses of the land." Again, these are factors that focus on things other than the land itself.

Here, the Board determined that the MacAngus property is land that has long-term commercial significance for agricultural production. In doing so, the Board primarily relied on the PDS Staff Report and Recommendation and the

[18] (Emphasis added.)

Draft Supplemental Environmental Impact Statement ("DSEIS"). It also rejected the County's Finding F in the challenged ordinance. It did so, in part, due to the County's failure to address the points raised in the PDS Staff Report and the DSEIS that are in the record.

We turn first to the primary factors that focus on the land itself. Specifically, we first examine the Board's finding through the lens of the land-capability classification system of the United States Department of Agriculture Soil Conservation Service.

The Board found that "the property's soil characteristics (as defined by the [United States Department of Agriculture] USDA, [Soil Conservation Service] SCS and the County), whether drained or not," met the relevant criteria. There does not appear to be any serious dispute that the record establishes that the MacAngus property consists of five soil types, which are classified by the SCS and the "Soil Survey of Snohomish County Area Washington" (Soil Survey) as follows:

1. **Custer fine sandy loam:** This soil covers the clear majority of the proposal area. It is considered prime farmland by Snohomish County and prime farmland by USDA when drained. (SCS/Soil Survey- Class IVw).

2. **Lynnwood loamy sand:** This soil occurs on the south portion of the parcel. It is considered prime farmland by Snohomish County and prime farmland by USDA when irrigated. (SCS/Soil Survey- Class IVs).

3. **Norma loam:** This soil is the second most common type in the parcel. It is considered prime farmland by Snohomish County and prime farmland by USDA when drained. (SCS/Soil Survey- Class IIIw).

4. **Norma variant loam:** This soil covers a fairly small percentage of the property. It is considered prime farmland by Snohomish County and prime farmland by USDA when drained. (SCS/Soil Survey- Class IIIw).

5. **Ragnar fine sandy loam:** This soil is only at one isolated location on the parcel. It is considered prime farmland under all conditions by Snohomish County and USDA. (SCS/Soil Survey- Class IIIe).

Rather, a primary dispute between the parties centers on the effect of the subject property containing predominately Class IVw soils, which are prime farmland "***when drained***." MacAngus maintained before the Board, as it does here, that its property is predominantly composed of soils that would have to first be drained to qualify as prime farmland under the governing classification system. Futurewise did not seriously contest before the Board that the subject property is predominately Class IVw soils, but argued that some of the property is not burdened by the "when drained" caveat. More importantly, Futurewise countered by relying on the County's policy decision to only consider the physical characteristics of the soil and "not human features, such as ***drainage***, flood protection and irrigation systems."[19] According to the County's own documents, this policy decision to exclude consideration of "human factors" is explained as follows:

> The Washington Department of Community, Trade and Economic Development has prepared guidelines for identification and classification of agricultural lands (WAC 365-190-050). One criterion established under these guidelines states that cities and counties shall use the USDA Soil Conservation Service land capability classification system. Consistent with this guidance,

[19] (Emphasis added.)

> Snohomish County considered the list of prime farmland soils from USDA. ***The County determined that the physical characteristics of the soil, and not human features, such as drainage, flood protection and irrigation systems, should play a determining factor in designation of prime farmland.*** Therefore, the County concluded that all 25 listed soils in the county should be considered prime farmland, regardless of any site-specific conditions such as drainage, flood-protection, or irrigation. The decision is based on the intent to create a stable long-term inventory of agricultural lands that is not affected by individual landowner intent or actions. This decision is consistent with direction from the Washington State Supreme Court [City of Redmond v. Central Puget Sound Growth Mgmt. Hearings Bd.[20]].[21]

The Board accepted this argument, and so do we on the basis of controlling precedent from the state supreme court. In City of Redmond, the court construed and applied the definition of "agricultural lands" under the GMA.[22] In doing so, it held that the landowners' current use or intended use of the land is not conclusive under the statutory definition.[23] In explaining its reasoning, the court pointed out that to allow landowner intent to trump other considerations would have the practical effect of allowing landowners to override the state policy toward agricultural land protection embodied in the GMA.[24]

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[20] 136 Wn.2d at 53 (holding that "the land use on the particular parcel and the owner's intended use for the land may be considered along with other factors in the determination of whether a parcel is in an area primarily devoted to commercial agricultural production, neither current use nor landowner intent of a particular parcel is conclusive . . .").

[21] (Emphasis added.)

[22] 136 Wn.2d at 49-53.

[23] Id. at 53.

[24] Id. at 52-53.

It appears that the County reconciled this holding by our state's highest court with the legislative directive that it utilize the land-capability classification system of the United States Department of Agriculture Soil Conservation Service by eliminating consideration of human factors from the latter system. Specifically, under the County's decision, factors such as whether a property is drained or not is not relevant to its classification because it requires consideration of landowner intent. Thus, so long as the property has the physical characteristics (other than human factors) that qualify it for classification under the classification system, the land qualifies for potential treatment as land with long-term commercial significance for agricultural production, subject to consideration of the other factors set forth in the CTED guidelines.

MacAngus argues that the Board erroneously interpreted City of Redmond because it relied on MacAngus affirmatively draining the land, in order for the land to be prime farmland. The Board's decision would be contrary to the City of Redmond if, in determining whether the MacAngus property has long-term commercial significance, the Board solely relied on whether MacAngus intended to drain the land. It did not. Rather, the Board considered the City of Redmond decision, the GMA criteria, the CTED guidelines, and the County's policy decision. The Board did not err.

There is another reason why the County's policy decision, as expressed in the DSEIS Report, is consistent with the policies of the GMA. Grant County Assoc. of Realtors v. Grant County, Eastern Washington Growth Mgmt. Hearings

Bd.,[25] was a case in which land was not then qualified as agricultural land, but with the commitment of additional resources could be made to qualify.[26] The Eastern Board held that "[a]lthough the designated 'irrigated agricultural' lands may not be currently used for those purposes, they most certainly are 'capable of being used for agricultural production' at some time in the future."[27] The reasoning in that case supports the Board's decision here that the subject property currently has soil characteristics that qualify it as property with long-term commercial significance for agricultural production.

To supplement its finding, the Board also pointed to the County's 1993 Interim Agricultural Conservation Plan identifying Class II, III, and IV soils as prime farmland, which was incorporated into the County's GMA Plan in 1995.[28] The Board also pointed out that the County did not alter its soil criteria to include only those soils without constraints:

> Additionally, the County did not alter its criteria for designating agricultural land to include *only those soils*, according to SCS soils capability criteria, *without constraints*, such as drainage limitations. Had the County done so, the necessity to "de-designate existing

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[25] No. 99-1-0018, Final Decision and Order (May 23, 2000).

[26] Id. at 6.

[27] Id.

[28] (The 1993 Interim Agricultural Conservation Plan allowed Class IV soils to be prime farmland if "they were located on parcels of 10 acres or more immediately adjacent to parcels including Classes II and III soils." The County accepted the classification of the USDA SCS, which includes all Class II soils, most of Class III soils, and some Class IV and V soils as prime farmland. There are five categories of prime farmland, the first have no constraints, and the remaining four require drainage, irrigation, etc.).

> agricultural lands," which no longer met its designation criteria, would have likely affected far more designated agricultural land than the single 216-acre area affected by the amendment. Instead, without amending its own agricultural land soils designation criteria, the County apparently decided that a new soil constraint criterion,[29] regarding drainage, should be applied only to this area.[30]

This record establishes that the soil characteristics of the MacAngus property potentially qualify it under the second prong of the agricultural land definition, subject to consideration of the other factors. In short, there is a prima facie case for the land to be preserved under the GMA, subject to the other relevant statutory criteria.

We turn to Finding F in the challenged emergency ordinance 03-001. That is the material in the record on which the County primarily relied before the Board. The ordinance states that "the land in question does not have long-term commercial significance for agricultural production," referring to an exhibit that the County found persuasive. The Board notes in its decision that there is some uncertainty about the precise exhibit that is at issue. But it appears from our independent review of the record before us that nothing persuasively refutes the approach we have outlined above over the application of the soils characteristics to the subject property. More specifically, there is nothing in the record that refutes the characterization that the County chose to exclude "human factors" from consideration in classifying agricultural land. As that principle is applied to

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[29] Citing Finding F and its reference to the persuasiveness of the MacAngus proposal.

[30] CPSGMHB, Final Decision and Order (September 9, 2003), Volume VI, Tab 57 at 37.

the MacAngus property, it appears that the County has had a long-standing policy to apply these criteria to exclude human factors, such as drainage.

We note that Finding F is primarily devoted to consideration of factors that include some CTED factors as well as other factors. We will address these later in this opinion.

The absence of evidence either in Finding F or otherwise in the record to demonstrate a proper consideration of soil characteristics in view of long-standing County policy in making the determination whether the subject property has long-term commercial significance for agricultural production substantially undercuts the County's claim that it has complied with the requirements of the GMA. In this respect, at least, the County's decision is clearly erroneous.

We turn to the CTED guidelines.

(a) The availability of public facilities

Public facilities are defined as including "streets, roads, highways, sidewalks, street and road lighting systems, traffic signals, domestic water systems, storm and sanitary sewer systems, parks and recreational facilities, and schools."[31]

The public facilities available to the property include: three county roads including, 34th Ave NE, 14th St. NE, and 128th St. NE, a traffic signal, water systems, parks and recreational facilities, and schools and other facilities located within close proximity. A fair reading of this first criterion indicates that

[31] WAC 365-190-030(16); RCW 36.70A.030(12).

public facilities are generally available to the property with the exception of sewer service and storm drainage infrastructure to the site.

(b) Tax Status

The property is assessed at standard county rates. The County noted in its finding that the land is not taxed in an agricultural or open space tax exemption category.

(c) The availability of public services

Public services are defined as including "fire protection and suppression, law enforcement, public health, education, recreation, environmental protection, and other governmental services."[32] These services are provided to the property by Snohomish County, special districts, and the City of Marysville.

(d) Relationship or proximity to urban growth areas

Interstate 5 and the City of Marysville are located to the east of the property. The remainder of the property is not surrounded by urban growth.

(e) Predominant parcel size

Parcel sizes on the property are greater than 10 acres and vary from 16.71 to 68.90 acres. The parcels in the vicinity range from urban densities to the east in the City of Marysville to 10 acres or more to the north, west, and south.

(f) Land use settlement patterns and compatibility with agricultural practices

[32] WAC 365-190-030(17); RCW 36.70A.030(13).

The area to the north and west of the property is zoned Agriculture 10. The area to the south is zoned Rural Residential 10 Resource Transition. The Board noted that "[t]hese areas are generally undeveloped or developed with low-intensity rural uses that are compatible with agricultural practices." The Board failed to acknowledge the increased development to the south, but noted that the City of Marysville is to the east across Interstate 5. The County did not discuss this factor.

(g) Intensity of nearby land uses

There is increased urbanization to the south of the property, which the County found significant. The development to the south includes the Quilceda Village shopping center, containing a Wal-Mart, Home Depot, and numerous other retail outlets, and the construction of the new Tulalip Tribal Casino. The County also found that the surrounding property is largely residential. However, the County's own report states that the areas to the west and north are characterized by "farm and pasture land," along with single-family dwellings. The County omitted this fact from Finding F.

(h) History of land development permits issued nearby

The Board found that the development permit applications in the vicinity have generally been for rural low-intensity structures or improvements. The County did not address this factor.

(i) Land values under alternative uses

The County found that the land cannot be profitably farmed and its current agricultural use generates less revenue than the property tax generates. The County found that an alternative to the proposal is the sale of the property to the Tulalip Tribe, which the County noted, already has the Eastern half of the property appropriately zoned commercial in its plan.

(j) Proximity to markets

The nearest market is in the City of Marysville. There are other nearby markets in the Cities of Arlington and Everett.

We conclude from the review of these guidelines that the Board properly gave deference to the County's findings to the extent required by law. But we also conclude that the County failed to address all of the CTED guidelines. Moreover, it considered other matters that are irrelevant to these guidelines. Because these guidelines are secondary to the land itself, and the County's Finding F fails to address many of the relevant guidelines, we conclude that the County's decision is clearly erroneous. Our conclusion in this respect is also based on the fact that the County's decision is based on factors not relevant to the GMA or its policies. In short, the County's decision is clearly erroneous in this respect as well.

Burden Shifting

MacAngus argues the Board improperly imposed a burden on the County to prove that there had been changed circumstances to justify the re-

designation. We disagree.

When the Board reviews the County's actions, it is required to presume that comprehensive plans and development regulations are valid.[33] The burden is on the petitioner to show that the County's actions do not comply with the GMA, and the Board must find compliance unless it determines the County's actions are clearly erroneous.[34] In order to decide that the County's actions are clearly erroneous, the Board "must be 'left with the firm and definite conviction that a mistake has been committed.'"[35]

MacAngus relies on City of Redmond v. Cent. Puget Sound Growth Mgmt. Hearings Bd.[36] to argue that the Board improperly imposed a burden on the County to prove that the MacAngus property is not devoted to agricultural production. In City of Redmond '03, the Board shifted the burden to the city and required the city to present specific and rigorous evidence to justify its re-designation of Agricultural land to Urban Recreation:

> Such de-designation may only occur if the record shows demonstrable and conclusive evidence that the Act's definitions and criteria for designation are no longer met. The documentation of changed conditions that prohibit the continued designation,

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[33] RCW 36.70A.320(1); City of Redmond v. Cent. Puget Sound Growth Mgmt. Hearings Bd., 116 Wn. App. 48, 55, 65 P.3d 337 (2003) (hereinafter referred to as City of Redmond '03).

[34] RCW 36.70A.320(2-3); City of Redmond '03, 116 Wn. App. at 55.

[35] Quadrant Corp., 154 Wn.2d at 237 (citing King County, 142 Wn.2d at 552 (quoting Dep't of Ecology v. Pub. Util. Dist. No. 1, 121 Wn.2d 179, 201, 849 P.2d 646 (1993))).

[36] 116 Wn. App. 48.

> conservation and protection of agricultural lands would need to be ***specific and rigorous***. If such a de-designation action were challenged, it would be ***subject to heightened scrutiny by the Board***.[37]

The Board in City of Redmond '03 found that the city's re-designation for two parcels did not comply with the goals and the requirements of the GMA.[38] The Board concluded that "[t]he City failed to point to facts to justify removing these parcels from an agricultural designation."[39] This court reversed the Board's decision and held that the Board erred by placing a burden on the city to prove the validity of the ordinance.[40] This court rejected the Board's test:

> The Board's test for what it calls "de-designating" agricultural lands has no support in the GMA. ***Nothing in the GMA suggests a city must present "specific and rigorous" evidence subject to "heightened scrutiny" when defending a land use designation***. Rather, the GMA requires the Board to presume a challenged ordinance is valid, and the challenger has the burden of establishing invalidity.[41]

MacAngus argues that under City of Redmond '03, the Board erroneously interpreted and applied the law by imposing a burden on the County to demonstrate "changed circumstances." MacAngus' argument is misplaced.

Here, the Board found that there have not been any changed

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[37] Id. at 55 (emphasis added).

[38] Id. at 56.

[39] Id.

[40] Id. at 59-60.

[41] Id. at 56 (emphasis added).

circumstances to support the County's re-designation of the property:

> Here, Petitioner [Futurewise] has made a *prima facia* [sic] case supporting the assertion that there have been no changes to the soil condition, nor any changed circumstances that could support the County's revision of the 216 acres from agricultural lands to allow other non-agricultural related uses.[42]

After the Board reviewed the entire record, including the soil types, the Board found that "based upon the reasoning *supra*, the history of the property and its soil characteristics, . . . the soils found upon the property . . . are 'capable of being used for agricultural production.'" The Board also noted that "[t]he County does not dispute that the property is currently used for agricultural production" and found that "nothing has changed regarding the soil composition that persuades the Board that the property is not, or could not be, devoted to agriculture."

The Board did not shift the burden to the County to prove the validity of its ordinance with regard to the first prong. The Board discussed a change in circumstances to determine whether Futurewise carried its burden of proof. Futurewise met its burden to show that the property is primarily devoted to commercial agricultural production. Moreover, it is uncontested that the land is used for pasturing. As such, it qualifies as agricultural land, by definition. We hold that the Board did not improperly shift the burden to the County.

Costs

[42] CPSGMHB, Final Decision and Order (September 22, 2003), Volume VI, Tab 57 at 36.

The County and MacAngus request costs on appeal. A party is entitled to costs under RAP 14.2 if that "party substantially prevails on review, unless the court directs otherwise . . . ." Neither of these parties has substantially prevailed. Thus, costs are not awardable.

We reverse the superior court's decision and reinstate the Board's decision.

Cox, J.

WE CONCUR:

Eckerton, J.

Baker, J.